

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application for Reissue of:
Patent No. 5,602,905

Patentee: RICHARD P. METTKE

Issued: February 11, 1997

For: ON-LINE COMMUNICATION
TERMINAL/APPARATUS

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Attorney Docket No.: 6388.005

REISSUE DECLARATION PURSUANT TO 37 C.F.R. §§ 1.63 and 1.175

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

As a below named inventor, I hereby declare:

1. My residence, post office address and citizenship are as stated below next to my name.
2. I believe I am the original, first and sole inventor of the subject matter which is claimed in original Letters Patent No. 5,602,905 granted February 11, 1997, based upon Application Serial No. 376,247 filed January 23, 1995 and to be the original, first and sole inventor of the subject matter of the invention claimed in this application for a reissue patent being filed concurrently herewith.
3. I have reviewed and understand the contents of the specification, including the claims, of this reissue application.
4. I do not know and do not believe that said invention was ever known or used in the United States before my invention thereof.

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5. I believe the original patent to be wholly or partly inoperative or invalid by reason of me claiming less than I had the right to claim in the patent because claims directed to my on-line communication terminal/apparatus for accessing the Internet were inadvertently omitted. I prosecuted the application which issued as Letters Patent No. 5,602,905 *pro se*. In the first Office Action, the Examiner objected to the phrase "commercial on-line service/Internet" because it was vague and indefinite as to which limitation defines the scope and breadth of the claim. The Examiner also stated that "commercial on-line services" is not equivalent to "Internet provider." In view of the Examiner's remarks, I mistakenly removed the word "Internet" from the claims without submitting additional claims directed to an on-line communication terminal/apparatus for accessing the Internet. In error, I believed the Examiner's remarks meant that claims directed to accessing the Internet should not be submitted simultaneously with claims directed to accessing commercial on-line services. Accordingly, I mistakenly claimed less than I had a right to claim by not submitting additional claims directed to on-line communication terminal/apparatus for accessing the Internet. The specification certainly provides support for these amendments. For instance, please see col. 2, line 12.

6. The error that may render this patent wholly or partly inoperative arose entirely from inadvertence, accident, and mistake, and without any fraudulent and/or deceptive intent on my part or, on my best information and belief without any fraudulent and/or deceptive intent on the part of anyone else associated with me.

7. The error referred to above is remedied in this reissue application because the new claims in this application, 6-10, specifically recite a public on-line, pay-as-you-use communications terminal for accessing the Internet.

The following identifies all of the claims pending in this reissue application and the differences if any between these amended claims and the original claims of the patent: Original claims 1-5 are directed to a public on-line, pay-as-you-use communications terminal for accessing commercial on-line services and remain unchanged. New claims 6-10 are directed to a public on-line, pay-as-you-use communications terminal for accessing the Internet.

8. I acknowledge the duty to disclose to the Patent and Trademark Office all information, of which I am aware, which is material to patentability of this application as defined in Title 37, Code of Federal Regulations, § 1.56 and at this time bring the following U.S. patents, foreign patents and other publications to the attention of the U.S. Patent and Trademark Office:

U.S. Patents

4,902,881	2/1990 Janku
5,008,928	4/1991 Cleghorn
5,218,633	6/1993 Clagett et. al.
5,247,575	9/1993 Sprague et. al.
5,272,747	12/1993 Meads
5,333,181	7/1994 Biggs
5,393,964	2/1995 Hamilton, et. al.
5,396,546	3/1995 Remillard

The above listing of patents and publications are those that are cited on the face of U.S. Patent 5,602,905.

I also bring to the attention of the U.S. Patent and Trademark Office a copy of the deposition of Daniel J. Toughey, the representative of Touchnet Information Systems, Inc., and copies of the Exhibits attached thereto, a copy of the deposition of John F. Murphy, an employee of Touchnet Information Systems, Inc., a copy of Touchnet Information Systems, Inc.'s Answer to Plaintiff's Interrogatory No. 1, (Marked as Exhibit 2), as well as other documents produced by Touchnet

Information Systems, Inc., all of which Touchnet Information Systems, Inc. alleges invalidates Letters Patent No. 5,602,905:

TouchFax Network Topography Diagram, copyright 1991 (Marked Exhibit 3);

Affidavit of John F. Murphy and letters regarding offers for sale of TouchNet Public Access Terminals dated June 11, 1992 and July 13, 1993 (Marked Exhibit 4);

TouchFax advertisement for public facsimile systems, copyright 1991, (Marked Exhibit 6);

TouchFax advertisement for TF700 Public Communications Terminal (Marked Exhibit 7);

TouchFax advertisement for TF700 Public Communications Terminal, undated, (Marked Exhibit 8);

TouchFax advertisement for TF750 Public Communications Terminal, undated, (Marked Exhibit 9);

TouchFax advertisement for TF400 Public Communications Terminal, copyright 1992, (Marked Exhibit 10);

TouchFax advertisement for TF450 Public Communications Terminal, undated, (Marked Exhibit 11);

Article entitled: TouchFax Provides The Ultimate In Place-Based Interactivity, October 1992, (Marked Exhibit 12);

TouchFax Brochure entitled Multi-Media Interactive Terminal Location Opportunity, undated, (Marked Exhibit 13);

Article entitled TouchFax Keeps ringing Up Public Fax Machine Orders, Kansas City Business Journal, Vol. 11, Number 2, October 2-October 8, 1992, (Marked as Exhibit 14);

TouchFax advertisement entitled The Future Mad Simple, undated, (Marked as Exhibit 15);

Invoices for audio-visual services rendered to TouchFax, May 12, 1993 and May 31, 1993 (Marked as Exhibit 17);

Invoice for audio-visual services rendered to TouchFax, May 24, 1993 (Marked as Exhibit 18);

Invoices for advertising services rendered to TouchFax, September 2, 1993, October 5, 1993, and November 9, 1993 (Marked as Exhibit 19);

Mutual Nondisclosure Agreement, September 2, 1992, (Marked as Exhibit 21);

Letter to TouchFax Information Systems, Inc. from Flying J Inc., September 16, 1992;

National Account Program--Software License Agreement, February, 1993;

National Account Program--Equipment Purchase Agreement, February, 1993;

Facsimile regarding TRIP_RT and SCANLOAD, dated September 17, 1993;

Facsimile regarding R TRIP Routine Information, dated September 9, 1993;

Various Screen Shots regarding steps taken for Routine Information from Ogden, Utah to Des Moines Iowa, undated;

Invoice for TF450 Public Fax Terminal sold by TouchFax Information Systems, Inc.;

TON Services Estimated Rollout Schedule, June 28, 1993;

TON Services, Inc. Installations as of 5/31/98, including date installed;

Article entitled Airport Kiosk Systems Requirements Statement, August 6, 1992, (Marked as Exhibit 22);

Letter to Dean Vermaire regarding Envoy100 Kiosks, November 5, 1992, (Marked as Exhibit 23);

Letter to Dean Vermaire Logon Script for Envoy100 Access, September 2, 1992, (Marked as Exhibit 24);

Software License Agreement, September 22, 1992, (Marked as Exhibit 25);

U.S. Patent No. 4,359,631 issued to Lockwood, et. al., November 16, 1982 (Marked Exhibit 16).

9. Further, I bring to the attention of the examiner that U.S. Patent 5,602,905 is presently in litigation wherein it has been alleged that my invention was on sale and in public use more than one year prior to the effective filing date of my application, that the claims of U.S. Patent 5,602,905


are obvious under 35 U.S.C. § 103, and that the claims of U.S. Patent 5,602,905 are invalid under 35 U.S.C. § 112. The allegations and documents related to those allegations are described and identified in the Notice of Litigation filed concurrently with this reissue application.

10. I respectfully request that a reissue patent be granted to me for the invention or discovery described and claimed in said Letters Patent and in the foregoing specification and claims, and I subscribe my name to the foregoing petition, specification and claims and declaration and power of attorney.

11. I hereby direct that all correspondence and telephone calls be addressed to Edward W. Goldstein, Tobor & Goldstein, L.L.P., 1360 Post Oak Blvd., Suite 2300, Houston, Texas 77056, (713) 877-1515.

12. I declare further that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application of any patent issuing thereon.

Inventor's Full Name: RICHARD P. METTKE
(First) (Initial) (Last)

Inventor's Signature: 

Date: 8-13-98 Country of Citizenship: U.S.A.

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